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11	Attorney for Defendant ETSY, INC.	
12	UNITED STATES DIS	STRICT COURT
13	NORTHERN DISTRICT	OF CALIFORNIA
14		
15	AS YOU SOW, a 501(c)(3) non-profit corporation,	Case No.:
16	•	DEFENDANT ETSY, INC.'S NOTICE OF
17	Plaintiff,	REMOVAL
18	v.	From the Superior Court of the State of California, County of Alameda, Case No. 24CV078868
19	ETSY, INC. and DOES 1-20, inclusive,	
20	Defendants.	
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NOTICE OF REMOVAL

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of Removal, and in accordance with 28 U.S.C. § 1446, Etsy states as follows:

PROCEDURAL BACKGROUND

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Etsy, Inc. ("Etsy") hereby

- 1. Plaintiff As You Sow sued Etsy in the Superior Court of California, County of Alameda on June 7, 2024, caption As You Sow v. Etsy, Inc., Case Number 24CV078868 ("State Court Action").
- 2. The Complaint stated three causes of action under California Health & Safety Code, § 25249.6 ("Proposition 65"), California Code Regulations, §§ 25602 and 25603, and California Business & Professional Code, § 17200 et seq.
- 3. Etsy has timely filed this Notice of Removal within thirty days after receipt of the Complaint in the State Court Action. See 28 U.S.C. § 1446(b)(3).
- 4. Under 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served on Etsy, as well as the electronic docket sheet and all items filed on the State Court Action docket that Etsy was able to access after receiving service of the Complaint, are attached as Exhibit 1.

VENUE

5. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and 1446(a), Etsy files this Notice of Removal in the United States District Court for the Northern District of California, which is the federal district court embracing the state court where Plaintiff has brought the State Court Action - in Alameda County, California. Venue is proper in this district pursuant to 28 U.S.C. § 84(a).

NOTICE

6. In accordance with 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Etsy will file a Notice of Removal with the Clerk of the Superior Court of the State of California, County of Alameda, and will attach a copy of this Notice of Removal (and all exhibits) thereto. A copy of the Notice of Removal (without exhibits) is attached as **Exhibit 2**.

GROUNDS FOR REMOVAL

- 7. Plaintiff alleges that Etsy violated Health & Safety Code § 25249.6 by knowingly distributing, selling, or offering for sale products in California that contained mercury and mercury compounds. Complaint, ¶¶ 84-85. Plaintiff further alleges that California consumers were not provided with a "clear and reasonable warning" prior to the purchase of these products. *Id.* ¶ 86.
- 8. Plaintiff's Complaint also alleges a violation of the California Code of Regulations on the basis that warnings allegedly were not displayed on the products description page on www.etsy.com. *Id.* ¶¶ 94-96.
- 9. Plaintiff's third cause of action alleges a violation of California Business & Professions Code § 17200 *et seq.* against Etsy for unlawful business practices. *Id.* ¶¶ 100-13. Plaintiff further alleges that it has suffered "injury in fact" as a result of Etsy's actions. *Id.* at ¶¶ 9, 34-36, 112.
- 10. For relief, Plaintiff seeks "civil penalties pursuant to Health and Safety Code section 25249.7, subdivision (b)(1) against Defendants [Etsy] in the amount of up to \$2,500 per day" for each violation, injunctive relief in the form of clear and reasonable warnings on the products, and recovery of reasonable attorney's fees. *Id.* ¶ 114 (A)-(D).

Diversity Jurisdiction

11. Diversity jurisdiction under 28 U.S.C. § 1332(a)(1) exists because this action is between citizens of different states and the amount in controversy exceeds \$75,000.00. *See* 28 U.S.C. § 1332(a)(1) and (a)(2).

A. Complete Diversity Exists Among the Parties

- 12. Complete diversity exists as Plaintiff and Etsy are both citizens of different states. Plaintiff alleges that it is a not-for-profit corporation with its principal place of business in California. Complaint ¶¶ 6-8. Defendant Etsy is a Delaware corporation with its principal place of business in New York.
- 13. The citizenship of the unnamed ("Doe") defendants is disregarded for purposes of determining diversity jurisdiction. *See* 28 U.S.C. § 1441(b)(1). Accordingly, there is complete diversity between the two named parties in the State Court Action.

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В **Amount in Controversy Exceeds \$75,000.00**

2 3 While Plaintiff does not plead a specific amount of damages, it is apparent that the

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- amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
- 15. Since Plaintiff "prepared a complaint that does not assert the amount in controversy," Etsy "can establish the amount in controversy by an unchallenged, plausible assertion of the amount in controversy in its notice of removal." *Ibarra v. Manheim Inv, Inc.* 775 F.3d 1193, 1197-98 (9th Cir. 2015); Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 87-89 (2014).
- 16. Here, Plaintiff's Complaint alleges, among other requests for relief, civil penalties pursuant to Health and Safety Code § 25249.7(b) for each alleged violation. That statute provides for civil penalties of up to "two thousand five hundred dollars (\$2,500) per day for each violation" in addition to "any other penalty" allowable under the law. See Cal. Health & Safety Code § 25249.7. Plaintiff's Complaint alleges that the relevant products have been offered for sale on Etsy's platform since "beginning at least in 2020 and are continuing to present..." Complaint ¶ 62. Plaintiff has identified 9 allegedly violative products in the Complaint. Complaint, ¶ 66. While Etsy disputes both liability and damages, an assessment of \$2,500 per day in civil penalties for each alleged product would result in an amount in excess of \$75,000.00.

MISCELLANEOUS

- 17. This action has not been previously removed to federal court.
- 18. By filing this notice of removal, Etsy does not waive any defenses, either procedural or substantive, that may be available. Among other things, Etsy does not waive and expressly reserves its right to compel arbitration of this action pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., its Terms of Use, and any other applicable law or agreement.
- 19. No statement or omission in this notice is an admission of any allegations of or damages sought in the Complaint, and for clarity, Etsy denies all of the allegations and claims in the Complaint and will present its arguments and defenses at the appropriate time.

¹ Etsy disputes any wrongdoing in this matter, but Etsy takes Plaintiff's allegations as true for the purposes of this Notice of Removal.

1	20. Etsy reserves and does not waive its right to amend this notice of removal and offer		
2	evidence supporting the Court's jurisdiction over this action.		
3	CONCLUSION		
4	21. This Court has jurisdiction over this action as the parties are completely diverse, and		
5	the amount in controversy exceeds \$75,000.00.		
6	Etsy therefore requests, under 28 U.S.C. §§ 1332, 1441, and 1446, that the State Cour		
7	Action be removed to the United States District Court for the Northern District of California, and		
8	that the Court assume jurisdiction over this action and enter such orders necessary to accomplish		
9	the requested removal.		
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11	DATED: July 11, 2024 Respectfully submitted,		
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13	McGUIREWOODS LLP		
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15	By: <u>/s/ Nicholas J. Hoffman</u>		
16	Samuel L. Tarry, Jr. Nicholas J. Hoffman		
17	Attorneys for Defendant ETSY, INC.		
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1	CERTIFICATE OF SERVICE	
2	I am employed in the County of Los Angeles, State of California. I am over the age of	
3	eighteen years and not a party to the within action; my business address is Wells Fargo Center, South	
4	Tower, 355 S. Grand Avenue, Suite 4200, Los Angeles, California 90071-3103. On July 11, 2024	
5	I caused the service of the foregoing document described as NOTICE OF REMOVAL , addressed	
6	as follows:	
7		
8 9 10	Rachel S. Doughty Jennifer Rae Lovko GREENFIRE LAW, PC 2748 Adeline Street, Suite A Attorneys for Plaintiff, AS YOU SOW	
11	Berkeley, CA 94703 Telephone: (510) 900-9502	
Fax: (510) 900-9502 Email: rdoughty@greenfirelaw.com		
rlovko@greenfirelaw.com		
14		
15	BY MAIL: I am "readily familiar" with the firm's practice of collection and processic correspondence for mailing with the United States Postal Service. Under that practice, would be deposited with the United States Postal Service that same day in the ordinal	
16 17	course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices.	
18 19	(BY ELECTRONIC TRANSMISSION): I caused such document to be served electronically to the person's electronic service address by transmitting a PDF format copy of such document(s) to each person at the e-mail addresses set forth above.	
20	of such document(s) to each person at the contain addresses set form above.	
21	I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.	
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23	Executed on July 11, 2024, at Los Angeles, California. /s/ Miguelina Mendez	
24	Miguelina Mendez	
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